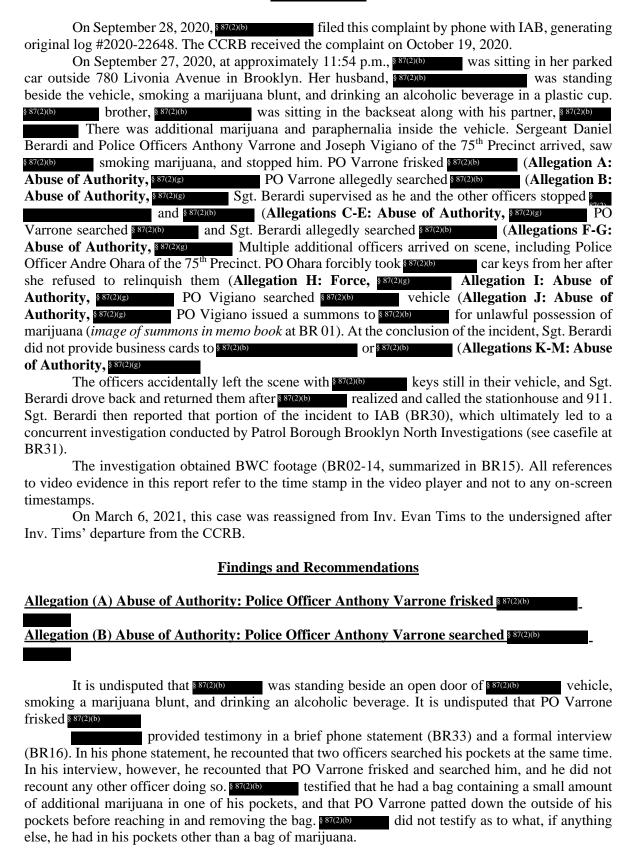
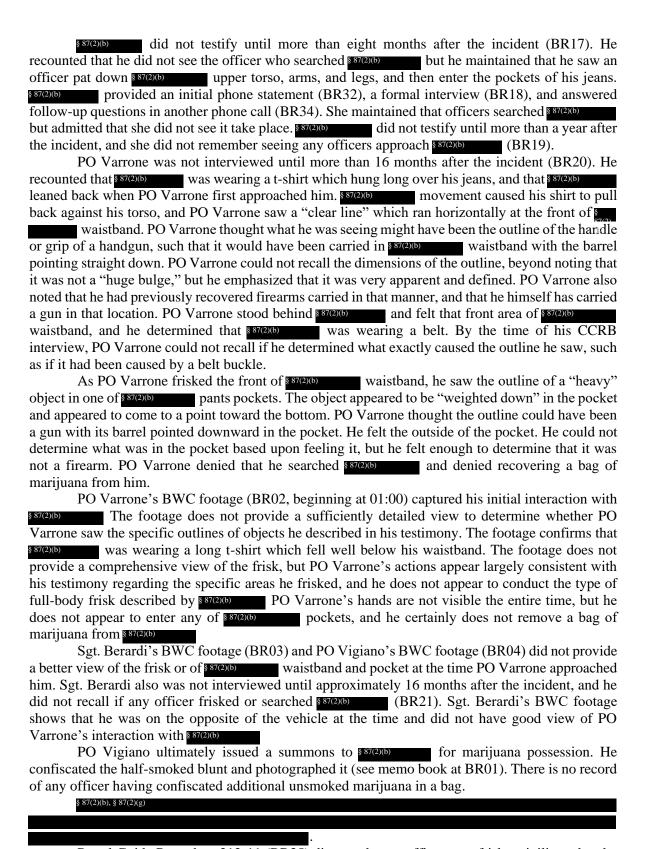
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	V	Force		iscourt.	U.S.
Stephen DiFiore		Squad #5	202006932		Abuse		L.	☐ Injury
T. C. C.		CT 11		<u> </u>		1034	COL	FO GOT
Incident Date(s)		Location of Incident:		'	Precinct:		o. SOL	EO SOL
Sunday, 09/27/2020 11:54 PM		in front of § 87(2)(b)			75		//2022	5/4/2022
Date/Time CV Reported		CV Reported At:	How CV Reported:	:	Date/Time	Receive	ed at CCI	RB
Mon, 09/28/2020 12:39 AM		IAB	Phone		Mon, 10/1	9/2020	11:58 AN	М
Complainant/Victim	Type	Home Addre	ess					
		-						
Subject Officer(s)	Shield	TaxID	Command					
1. POM Andre Ohara	09483	961031	075 PCT					
2. SGT Daniel Berardi	00729	948658	075 PCT					
3. POM Joseph Vigiano	19363	962152	075 PCT					
4. POM Anthony Varrone	15385	961405	075 PCT					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. POM Matthew Mccurry	20597	958897	075 PCT					
2. POM Sean Collins	29210	954654	075 PCT					
3. POM Michael Lagattolla	28165	955036	075 PCT					
4. SGT Vincent Calderone	2981	936038	075 PCT					
5. POM Gerard Duffy	27158	968385	075 PCT					
6. POM Lester Haynes	7304	954922	075 PCT					
7. POM Christophe Bracco	08029	963410	075 PCT					
Officer(s)	Allegation	on			Inve	estigato	r Recon	nmendation
A.POM Anthony Varrone	Abuse: P	Police Officer Anthony V	Varrone frisked § 87(2)(b)				
B.POM Anthony Varrone	Abuse: P § 87(2)(b)	Police Officer Anthony V	Varrone searched					
C.SGT Daniel Berardi	Abuse: S	ergeant Daniel Berardi	stopped § 87(2)(b)					
D.SGT Daniel Berardi	Abuse: S	ergeant Daniel Berardi	stopped § 87(2)(b)					
E.SGT Daniel Berardi	Abuse: S	ergeant Daniel Berardi	stopped § 87(2)(b)					
F.POM Anthony Varrone	Abuse: P	Police Officer Anthony V	Varrone searched § 87(2)(b)				
G.SGT Daniel Berardi	Abuse: S	ergeant Daniel Berardi	searched § 87(2)(b)					
H.POM Andre Ohara	Force: Poagainst	olice Officer Andre Oha	ra used physical force	ce				
I.POM Andre Ohara	Abuse: P	Police Officer Andre Oha	ara seized § 87(2)(b)		s			

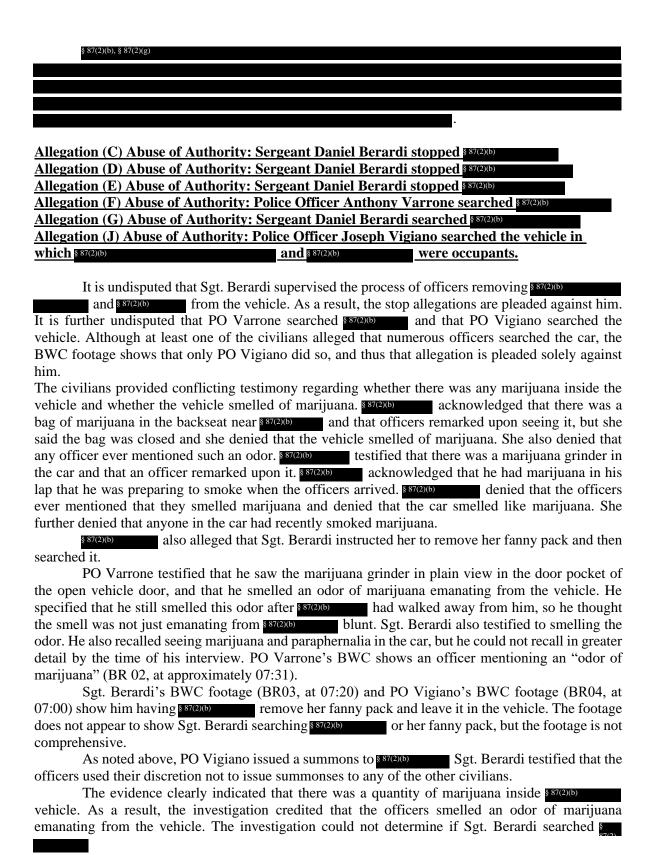
Officer(s)	Allegation	Investigator Recommendation
J.POM Joseph Vigiano	Abuse: Police Officer Joseph Vigiano searched the vehicle in which \$87(2)(b) and were occupants.	
K.SGT Daniel Berardi	Abuse: Sergeant Daniel Berardi failed to provide with a business card.	
L.SGT Daniel Berardi	Abuse: Sergeant Daniel Berardi failed to provide with a business card.	
M.SGT Daniel Berardi	Abuse: Sergeant Daniel Berardi failed to provide with a business card.	

Case Summary





Patrol Guide Procedure 212-11 (BR35) dictates that an officer may frisk a civilian when he develops reasonable suspicion that the person is armed. Such suspicion may arise from an officer seeing something on the civilian's person which he reasonably suspects is a weapon.



An officer may conduct a warrantless search of a vehicle and its occupants if that officer detects the odor of marijuana smoke or the general odor of marijuana. *People v. Chestnut*, 43 A.D.2d 260 (1974) (BR22); *People v. Smith*, 66 A.D.3d 514 (2009) (BR36) (*in effect at the time of this*

incident).
§ 87(2)(b), § 87(2)(g)
Allegation (H) Force: Police Officer Andre Ohara used physical force against
Allegation (I) Abuse of Authority: Police Officer Andre Ohara seized \$87(2)(b)
Allegation (1) Abuse of Authority: Police Officer Andre Ohara seized 88/(2)(6) Services Servi
It is undisputed that \$87(2)(b) refused to give her car keys to PO Ohara, that he used a degree of force in order to remove them from her hand, and that she "fought" and physically resisted his attempt. The exact manner of force PO Ohara used remains in dispute. \$87(2)(b) recounted that she tried to give her keys to a bystander when the officers ordered are out of the car, and that PO Ohara told her the officers needed the keys as part of their investigation." \$87(2)(b) turned away from PO Ohara, and he pushed her "hard" against the car was pregnant at the time. \$87(2)(b) turned away from PO Ohara, and he pushed her "hard" against the car was pregnant at the time. \$87(2)(b) turned away from PO Ohara, and he pushed her "hard" against the car was pregnant at the time.
ightly.
similarly alleged that PO Ohara pushed her against the car with his whole body such that her stomach hit the car with force, and then PO Ohara used his body to press her against the car while grabbing her hands. SS7(2)(6) alleged that PO Ohara pushed SS7(2)(6) stomach-first nto the car and twisted her arm behind her back. SS7(2)(6) claimed that PO Ohara pinned her against her car and pushed her head and shoulders down toward the trunk of the car. Called for an ambulance approximately an hour after the incident due to stomach cramps, and she spent a couple hours at the hospital. She did not suffer any visible bruising. She nitially said that one of her fingernails was damaged in an altercation with SS7(2)(6) several day brior, and that the nail completely fell off during the struggle with PO Ohara. However, she late explained that she was merely referring to an acrylic nail, and that she did not suffer an injury to he singer.
PO Varrone's BWC footage provided a clear view of PO Ohara's interaction with (BR02, at approximately 05:40). She turns away from him and walks up against her car are tries to take her keys. PO Ohara stands behind her such that she is in between PO Ohara and he car. While standing behind her, he reaches around her body and finally pulls the keys out of her hand at 06:07. At no point does PO Ohara shove against the car, hold her against the car, twist her arm behind her back, or force her head or shoulders down toward the body of the car. BWC also shows that PO Vigiano later needed to use the car keys to open the vehicle's trunk while he searched to
It was not necessary to interview PO Ohara to reach a disposition for this allegation. Patrol Guide Procedure 221-01 states, "Force may be used when it is reasonable to ensur the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, an application or use of force must be reasonable under the circumstances" (BR23).
§ 87(2)(b), § 87(2)(g)

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Allegation (K) Abuse of Authority: Sergeant Daniel Berardi failed to provide \$87(2)(6) with a business card. Allegation (L) Abuse of Authority: Sergeant Daniel Berardi failed to provide [887(2)6) with a business card. Allegation (M) Abuse of Authority: Sergeant Daniel Berardi failed to provide [87(2)6) with a business card. As Sgt. Berardi supervised and took part in the stops of all three individuals, the search of and the search of the vehicle, these allegations are pleaded solely against him. and § 87(2)(b) testified that no officer offered them a business card. also testified that no officer offered a business card to any of the civilians. § 87(2)(b) did not testify specifically about this allegation, though neither reported receiving a business card or seeing anyone else receive one. Sgt. Berardi initially denied that he provided a business card and explained that one would not have been required because the officers issued a summons as a result of the incident. However, he later confirmed that the nature of the incident would have required officers to provide business cards to the civilians who did not receive summonses. He could not recall if he or any other officer provided business cards to the civilians who did not receive summonses. He testified that none of the civilians ever requested a card. Sgt. Berardi's BWC footage ends before he has left the scene entirely, but it captures the bulk of the incident and does not show him ever offering or providing a business card to anyone. None of the other BWC footage showed any officer providing a business card. New York City Administrative Code 14-174 (BR37) and Patrol Guide Procedure 203-09 (in effect at the time of the incident) (BR24) require officers to proactively offer business cards to any civilian whom they stop or frisk, and to civilians whose vehicles they search, when those civilians are not arrested or issued a summons. An officer need not provide a card when "exigent circumstances require immediate action by such officer," such as physical resistance, flight, imminent danger of physical injury or damage to property. § 87(2)(b), § 87(2)(g) **Civilian and Officer CCRB Histories** This is the first CCRB complaint to which § 87(2)(b) or § 87(2)(b) have been a party (BR25). Sgt. Berardi has been a member of the NYPD for 11 years and has been a subject in nine other CCRB complaints and 24 allegations, none of which were substantiated. Sgt. Berardi is currently a subject in four other complaints and 11 allegations. § 87(2)(g) PO Varrone has been a member of the NYPD for six years and has been a subject in two other CCRB complaints and six allegations, none of which were substantiated. PO Varrone is currently a subject in one other complaint and five other allegations. The investigation into this complaint is ongoing. PO Ohara has been a member of the NYPD for six years and has been a subject in nine prior CCRB

complaints and 24 prior allegations, of which two were substantiated:

201907780 involved substantiated allegations of frisk against PO Ohara. The Board recommended Command Discipline B and the NYPD imposed Command Discipline B. PO Vigiano has been a member of the NYPD for five years and has been a subject in four other CCRB complaints and 11 other allegations, none of which were substantiated. §87(2)(g) Mediation, Civil, and Criminal Histories declined to mediate this complaint. As of June 22, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (BR26). According to the Office of Court Administration (OCA), §87(2)(b) and § 87(2)(b) have no history of convictions in New York City in the past ten years (BR29). Squad: 5 Inv. Stephen DiFiore Investigator: Stephen J. DiFiore February 25, 2022 Print Title & Name Signature Date Squad Leader: Daniel Giansante IM Daniel Giansante February 25, 2022 Print Title & Name Signature Date Reviewer:

Signature

Print Title & Name

Date